

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JARNAL SINGH, also known as JARNAIL  
SINGH,

Petitioner,

v.

MICHAEL B. MUKASEY, et al.,

Respondents.

CASE NO. C08-1083-RSL-JPD

REPORT AND RECOMMENDATION

I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Jarnal Singh, a.k.a., Jarnail Singh, is a native and citizen of India who is being detained by the United States Immigration and Customs Enforcement (“ICE”). On July 17, 2008, he filed the instant Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging the statutory and constitutional authority of ICE to detain him any further due to the unlikelihood of his removal from the United States in the reasonably foreseeable future. (Dkt. 1, Attach. 2).<sup>1</sup> Petitioner requests that he be released from custody pending his removal from the

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<sup>1</sup>This is the second habeas petition petitioner’s has filed in this Court challenging his continued detention. *See Singh v. Clark*, 08-11-RSL-MAT (dismissed May 19, 2008).

1 United States.

2 Having carefully reviewed the entire record, I recommend that petitioner's habeas  
3 petition be DENIED.

4 **II. BACKGROUND AND PROCEDURAL HISTORY**

5 On January 10, 2007, petitioner was apprehended by the United States Bureau of  
6 Customs and Border Protection in Lynden, Washington, after he illegally crossed the border into  
7 the United States. (*Singh v. Clark*, 08-11-RSL-MAT, Dkt. 10 at R78, L25-26). Petitioner was  
8 served with a Notice to Appear, charging him with removability from the United States under  
9 Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), for being present in the  
10 United States without being admitted or paroled. (*Singh v. Clark*, 08-11-RSL-MAT, Dkt. 10 at  
11 L21-22). ICE issued a Warrant for Arrest of Alien and a Notice of Custody Determination,  
12 setting bond in the amount of \$50,000. (*Singh v. Clark*, 08-11-RSL-MAT, Dkt. 10 at L16-17).  
13 Petitioner filed a motion for bond redetermination hearing before an Immigration Judge ("IJ"),  
14 requesting that the IJ release him on his own recognizance or, in the alternative, reduce his bond  
15 to \$1500. (*Singh v. Clark*, 08-11-RSL-MAT, Dkt. 10 at L29-37). On March 27, 2007, an IJ  
16 reduced petitioner's bond to \$30,000. (*Singh v. Clark*, 08-11-RSL-MAT, Dkt. 10 at L40).

17 On June 25, 2007, the IJ denied petitioner's application for asylum, withholding of  
18 removal, and protection under the Convention Against Torture, and ordered him removed to  
19 India.<sup>2</sup> (*Singh v. Clark*, 08-11-RSL-MAT, Dkt. 10 at L233). Petitioner appealed the IJ's order  
20 of removal to the Board of Immigration Appeals ("BIA"), who dismissed the appeal on  
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23 <sup>2</sup>Petitioner's removal hearing was initially scheduled for February 15, 2007, and was  
24 continued three times to allow petitioner time to obtain counsel. (*Singh v. Clark*, 08-11-RSL-  
25 MAT, Dkt. 10 at L312-329). Petitioner ultimately proceeded pro se on March 19, 2007.  
26 (*Singh v. Clark*, 08-11-RSL-MAT, Dkt. 10 at L303-311).

1 November 23, 2007. (*Singh v. Clark*, 08-11-RSL-MAT, Dkt. 10 at L375-77). On December  
2 20, 2007, petitioner filed a Petition for Review of the BIA's decision with the Ninth Circuit  
3 Court of Appeals, along with a motion for stay of removal. *Singh v. Mukasey*, No. 07-74959  
4 (9<sup>th</sup> Cir. 2008). Pursuant to Ninth Circuit General Order 6.4(c)(1)(3), this caused a temporary  
5 stay to automatically issue.

6 On January 4, 2008, petitioner filed his first habeas petition in this Court, challenging his  
7 detention pending the resolution of his Petition for Review. (*Singh v. Clark*, 08-11-RSL-MAT,  
8 Dkt. 4). On February 15, 2008, however, petitioner filed a motion for voluntary dismissal of his  
9 Petition for Review in the Ninth Circuit. The Ninth Circuit granted petitioner's motion for  
10 voluntary dismissal and the mandate issued on March 14, 2008. *See Singh*, No. 07-74959.

11 On April 22, 2008, the Honorable Mary Alice Theiler issued a Report and  
12 Recommendation, recommending that petitioner's first habeas petition be dismissed because  
13 petitioner was lawfully detained in the "removal period." *See Singh v. Clark*, 08-11-RSL-MAT,  
14 Dkt. 11. On May 19, 2008, the Honorable Robert S. Lasnik issued an Order adopting the  
15 Report and Recommendation and dismissing petitioner's first habeas petition. *See Singh v.*  
16 *Clark*, 08-11-RSL-MAT, Dkts. 12 and 13.

17 On July 17, 2008, petitioner filed the instant habeas petition, challenging his continued  
18 detention. (Dkt. 1).

### 20 III. DISCUSSION

21 "When a final order of removal has been entered against an alien, the Government must  
22 facilitate that alien's removal within a 90-day 'removal period.'" *Thai v. Ashcroft*, 366 F.3d 790,  
23 793 (9<sup>th</sup> Cir. 2004)(citing *Xi v. INS*, 298 F.3d 832, 834-35 (9<sup>th</sup> Cir. 2002)); INA § 241(a)(1)(A),  
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1 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following:

2 (i) The date the order of removal becomes administratively final.

3 (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal  
4 of the alien, the date of the court's final order.

5 (iii) If the alien is detained or confined (except under an immigration process), the date  
6 the alien is released from detention or confinement.

7 INA § 241(a)(1)(B), 8 U.S.C. § 1231(a)(1)(B) (emphasis added); *see also Khotessouvan v.*

8 *Morones*, 386 F.3d 1298, 1300 n.3 (9<sup>th</sup> Cir. 2004) (stating that the 90-day removal period

9 commences on “the date the order of removal becomes final; the date a reviewing court lifts its

10 stay following review and approval of the order of removal; or the date the alien ordered

11 removed is released from non-immigration related confinement.”). During the removal period,

12 continued detention is statutorily required. INA § 241(a)(2), 8 U.S.C. § 1231(a)(2) (“During

13 the removal period, the Attorney General shall detain the alien.”). The statute further permits

14 detention beyond the removal period where removal cannot be accomplished within ninety days.

15 INA § 241(a)(6) provides:

16 An alien ordered removed who is inadmissible under section 1182 of this title,  
17 removable under section 1227(a)(1)(C), 1227 (a)(2), or 1227(a)(4) of this title  
18 or who has been determined by the Attorney General to be a risk to the  
19 community or unlikely to comply with the order of removal, may be detained  
beyond the removal period and, if released, shall be subject to the terms of  
supervision in paragraph (3).

20 8 U.S.C. § 1231(a)(6).

21 In *Zadvydas*, the Supreme Court held that this post removal period detention statute,

22 INA § 241(a)(6), does not permit indefinite detention, but “implicitly limits an alien’s [post

23 removal period] detention to a period reasonably necessary to bring about the alien’s removal

24 from the United States.” *Zadvydas*, 121 S. Ct. at 2498. In determining what is a reasonable

1 removal period, the Court adopted “for the sake of uniform administration in the federal courts,”  
2 *id.* at 2505, a “presumptively reasonable period of detention” of six months. *Id.*  
3 After this six month period, the alien is eligible for conditional release upon demonstrating that  
4 there is “no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If the  
5 petitioner meets this burden, the government must respond with evidence sufficient to rebut that  
6 showing. *Id.*

7         In the present case, the Ninth Circuit granted petitioner’s motion for voluntary dismissal  
8 and the mandate issued the on March 14, 2008, thereby commencing the removal period. *See*  
9 *Singh*, No. 07-74959; INA § 241(a)(1)(B)(ii), 8 U.S.C. § 1231(a)(1)(B)(ii). Accordingly,  
10 petitioner’s ninety-day removal period expired on or about June 14, 2008, and the six-month  
11 presumptively reasonable removal period will expire on or about September 14, 2008. Because  
12 petitioner seeks release prior to the expiration of the presumptive six-month period, his claims  
13 under *Zadvydas* are unripe for federal review. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052  
14 (11<sup>th</sup> Cir. 2002) (“This six-month period thus must have expired at the time Akinwale’s § 2241  
15 petition was filed in order to state a claim under *Zadvydas*.”).

17         Accordingly, I recommend that petitioner’s habeas petition be dismissed without  
18 prejudice. Should petitioner’s detention continue past the six-month removal period, he may  
19 challenge his detention by filing a new habeas petition.

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1 IV. CONCLUSION

2 For the foregoing reasons, I recommend that petitioner's habeas petition be DENIED,  
3 and that this matter be dismissed without prejudice. A proposed Order accompanies this Report  
4 and Recommendation.

5 DATED this 21st day of July, 2008.

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7 JAMES P. DONOHUE  
8 United States Magistrate Judge  
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